IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

REBECCA A. BOONE On Behalf of Herself,
GARY SMITH On Behalf of Himself,
and All Others Similarly Situated,

Plaintiffs,

Case No. 2:14-cv-12281-MOB-DRG
Hon: Marianne O. Battani
Mag.

v.

PORTFOLIO RECOVERY ASSOCIATES, LLC

Defendant.

PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

Plaintiffs move for an order certifying this action as a class action pursuant to Fed.R.Civ.P.23(a) and 23(b)(3).[1]

Plaintiffs Boone and Smith have filed an Amended class action complaint against defendant PORTFOLIO RECOVERY ASSOCIATES, LLC (PRA) alleging that the debt collection form letters sent by Defendants to Plaintiffs and numerous other Michigan consumers:

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[1] **Plaintiff is filing this motion for class certification at this early time because of the decision *Damasco v. Clearwire Corp.*, 662 F.3d 891 (7th Cir. 2011), which held that the defendant's offer of judgment under Fed.R.Civ.P. 68, made prior to the plaintiff filing for a motion for class certification, and which provided complete relief to the individual plaintiff, deprived the court of jurisdiction and mooted the case.** The *Damasco* court advised that future plaintiffs could avoid the problem "simply by moving to certify a class when filing a suit." Id. at 897. The decision *Damasco* has resulted in a rash of procedural gamesmanship by defendants sued in putative class actions and has forced plaintiffs' counsel to file motions for class certification prior to being able to commence discovery on issues such as numerosity. Plaintiff's counsel is not aware of any pronouncement to date by the Sixth Circuit Court of Appeals that would resolve the issue. Plaintiff's counsel is not aware of any pronouncement to date by the Sixth Circuit Court of Appeals that would resolve the issue. **Please also see *Hrivnak v. NCO Portfolio Management, Inc.*, 719 F.3d 564 (6th Cir. June 11, 2013) for 6th Circuit rationale.**

(a) Whether the Plaintiff and the class members all received the same or similar "PRA" letter from Defendants similar to **Exhibit 2 and 3**;

(b) Whether the PRA letter was communicated with information that was false, deceptive, misleading or untrue in collection of a debt with PRA naming itself both the collector and the creditor in the same letter;

(c) Whether the PRA letter informed Michigan Consumers that Defendant PRA was both the creditor and debt collector in collecting the subject debt in violating the FDCPA and RCPA;

Plaintiffs claim that Defendants' actions violated the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 et seq and Regulation of Collection Practices Act ("MCPA") , M.C.L. § 445.251 *et seq.*.

Plaintiffs propose certification of a general class and a subclass.

> The general class is defined as (a) each and every natural person with a Michigan mailing address; (b) to whom Defendant PRA sent a letter in the form of **Exhibit 2 and 3** (attached to the Complaint), (c) in an attempt to collect a debt incurred by the person for personal, family or household purposes in violation of the FDCPA and MCPA. The 2nd Class is the same but based upon the RCPA and with a longer statute of limitations.

Plaintiffs' accompanying brief explains why the requirements for class certification under Fed.R.Civ.P. 23(a) and 23(b)(3) are satisfied in this case. Under Rule 7.1 there are no attorneys to contact on behalf of Defendant PRA as they have

not made an appearance as of this date.

Respectfully submitted,

LAW OFFICES OF BRIAN P. PARKER, P.C.

s/Brian P. Parker

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